

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Cause No. 1:13-cr-0049-SEB-TAB
	)	
RICHARD APPLINGTON,	)	
	)	
Defendant.	)	- 01

**REPORT AND RECOMMENDATION**

On April 4, 2022, the Court held a hearing on the Petition for Warrant or Summons for Offender Under Supervision filed on March 29, 2022. Defendant Applington appeared in person with his appointed counsel, Joseph Cleary. The government appeared by Kelsey Massa, Assistant United States Attorney. U. S. Parole and Probation appeared by Officers Ryan Sharp.

The Court conducted the following procedures in accordance with Fed. R. Crim. P. 32.1(a)(1) and 18 U.S.C. § 3583:

1. The Court advised Defendant Applington of his rights and provided him with a copy of the petition. Defendant Applington orally waived his right to a preliminary hearing.
2. After being placed under oath, Defendant Applington admitted violation numbers 1, 2, and 3. [Docket No. 65.]
3. The allegations to which Defendant admitted, as fully set forth in the petition, are:

<b><u>Violation Number</u></b>	<b><u>Nature of Noncompliance</u></b>
1	<p><b>“The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance.”</b></p> <p>On Monday, March 22, 2022, Mr. Applington tested positive for amphetamines and cocaine. He admitted using methamphetamine and Adderal throughout the weekend. On Monday, March 29, 2022, Mr. Applington reported to the probation office and admitted he relapsed and used methamphetamine all weekend. The urine test results are pending.</p>
2	<p><b>“You shall reside in a residential reentry center for a term of up to 180 days. You shall abide by the rules and regulations of the facility.”</b></p> <p>On March 24, 2022, while residing at the Volunteers of America, Mr. Applington was removed from the facility after a pattern of disruptive behavior since his arrival on Tuesday, March 22, 2022. During this three day period, Mr. Applington went by ambulance to the hospital on at least four different occasions. Mr. Applington believed everyone including the doctors, probation officer, and director of the Volunteers of America were conspiring to harm him. His behavior became too disruptive and he was removed from the Volunteers of America.</p>
3	<p><b>“The defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer.”</b></p> <p>On March 29, 2022, Mr. Applington failed to meet his probation officer at Marion County's Assessment and Intervention Center (AIC). On March 28, 2022, he was instructed to arrive at the AIC at 9 a.m. on March 29, 2022, for the substance abuse inpatient intake process. He did not report or make any attempt to call. In the evening of March 28, 2022, he was transported to Community Howard Mental Health in Kokomo, Indiana, by Kokomo Police Department. On March 29, 2022, a nurse at Community verified that Mr. Applington was released at 6:36 a.m. following treatment for amphetamine use disorder. Given this information, he had time to meet the probation officer or at least communicate his situation. He failed to do either and his whereabouts are currently unknown.</p>

4. The parties stipulated that:

- (a) The highest grade of violation is a Grade B violation.
- (b) Defendant's criminal history category is VI.
- (c) The range of imprisonment applicable upon revocation of supervised release, therefore, is 21 to 27 months' imprisonment.

5. The parties jointly recommended a sentence below the guideline range of twelve (12) months with thirty-six (36) months of supervised release to follow. Defendant requested placement at USP Coleman I, RHU unit.

The Magistrate Judge, having considered the factors in 18 U.S.C. § 3553(a), and as more fully set forth on the record, finds that the Defendant violated the conditions in the petition, that his supervised release should be revoked, and that he should be sentenced to the custody of the Attorney General or his designee for a period of twelve (12) months with thirty-six (36) months of supervision to follow. In addition to the mandatory conditions of supervision, the following conditions of supervised release will be imposed:

- 1. You shall report to the probation office in the district to which you are released within 72 hours of release from the custody of the Bureau of Prisons. Justification: This condition is an administrative requirement of supervision.
- 2. You shall report to the probation officer in a manner and frequency directed by the court or probation officer. Justification: This condition is an administrative requirement of supervision.
- 3. You shall permit a probation officer to visit you at a reasonable time at home, or another place where the officer may legitimately enter by right of consent, and shall permit confiscation of any contraband observed in plain view of the probation officer. Justification: This condition will assist the probation officer in monitoring the defendant for protection of the community.
- 4. You shall not knowingly leave the judicial district without the permission of the court or probation officer. Justification: This condition is an administrative requirement of supervision.

5. You shall answer truthfully the inquiries by the probation officer, subject to your 5th Amendment privilege. Justification: This condition is an administrative requirement of supervision.
6. You shall not meet, communicate, or otherwise interact with a person you know to be engaged, or planning to be engaged, in criminal activity. You shall report any contact with persons you know to be convicted felons to your probation officer within 72 hours of the contact. Justification: This condition is aimed at reducing the risk of recidivism and providing for public safety.
7. You shall reside at a location approved by the probation officer and shall notify the probation officer at least 72 hours prior to any planned change in place or circumstances of residence or employment (including, but not limited to, changes in residence occupants, job positions, job responsibilities). When prior notification is not possible, you shall notify the probation officer within 72 hours of the change. Justification: This condition will assist the probation officer in monitoring the defendant for protection of the community.
8. You shall not own, possess, or have access to a firearm, ammunition, destructive device or dangerous weapon. Justification: This condition will assist the probation officer in monitoring the defendant for protection of the community.
9. You shall notify the probation officer within 72 hours of being arrested, charged, or questioned by a law enforcement officer. Justification: This condition is an administrative requirement of supervision.
10. You shall maintain lawful full time employment, unless excused by the probation officer for schooling, vocational training, or other reasons that prevent lawful employment. Justification: This condition will ensure the defendant maintains gainful employment and reduce the risk of recidivism.
11. You shall make a good faith effort to follow instructions of the probation officer necessary to ensure compliance with the conditions of supervision. Justification: This condition is aimed at reducing the risk of recidivism and providing for public safety.
12. You shall participate in a substance abuse or alcohol treatment program approved by the probation officer and abide by the rules and regulations of that program. The probation officer shall supervise your participation in the program (provider, location, modality, duration, intensity, etc.). Justification: This condition will address the defendant's current issue with substance abuse while on supervised release.
13. You shall not use or possess alcohol. Justification: This condition will help ensure compliance with a sober lifestyle.

14. You shall not use or possess any controlled substances prohibited by applicable state or federal law, unless authorized to do so by a valid prescription from a licensed medical practitioner. You shall follow the prescription instructions regarding frequency and dosage. Justification: This condition will address the defendant's history of substance abuse.
15. You shall submit to substance abuse testing to determine if you have used a prohibited substance or to determine compliance with substance abuse treatment. Testing may include no more than 8 drug tests per month. You shall not attempt to obstruct or tamper with the testing methods. Justification: This condition will help ensure compliance with a drug-free lifestyle.
16. You shall participate in a mental health treatment program, as approved by the probation officer, and abide by the rules and regulations of that program. The probation officer, in consultation with the treatment provider, shall supervise participation in the program (provider, location, modality, duration, intensity, etc.). You shall take all mental health medications that are prescribed by your treating physician. The court authorizes the release of the presentence report and available evaluations to the treatment provider, as approved by the probation officer. Justification: This condition will address the defendant's mental health needs.
17. You shall pay the cost associated with the following imposed conditions of supervised release, to the extent you are financially able to pay: substance abuse treatment and testing. Justification: This condition will encourage the offender to be invested in his recovery.
18. You shall provide the probation office access to any requested financial information and shall authorize the release of the information to the U.S. Attorney's Office for use in connection with the collection of any outstanding fines and/or restitution. Justification: This condition will encourage the offender to make payments on his outstanding restitution balance.
19. You shall not incur new credit charges, or open additional lines of credit without the approval of the probation officer. Justification: This condition will address the offender's obligation to make payments on his restitution.
20. You shall submit to the search by the probation officer of your person, vehicle, office/business, residence, and property, including any computer systems and hardware of software systems, electronic devices, telephones, and Internet-enabled devices, including the data contained in any such items, whenever the probation officer has a reasonable suspicion that a violation of a condition of supervision or other unlawful conduct may have occurred or be underway involving you and that the area(s) to be searched may contain evidence of such violation or conduct. Other law enforcement may assist as necessary. You shall submit to the seizure of contraband found by the probation officer. You shall warn other occupants these locations may be subject to searches.

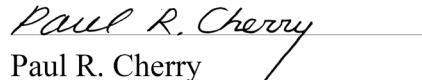
Justification: This condition will assist the probation officer in monitoring the defendant for protection of the community.

Defendant reviewed the foregoing conditions and they were reviewed by defendant with his attorney. Defendant, on the record, waived reading of the above-noted conditions of supervised release.

Defendant Allen is to be taken into custody immediately pending the District Judge's action on this Report and Recommendation. The Magistrate Judge will make a recommendation of placement at the RHU unit within USP Coleman I.

The parties are hereby notified that the District Judge may reconsider any matter assigned to a Magistrate Judge. The parties waived the fourteen-day period to object to the Report and Recommendation.

Date: 4/5/2022

  
Paul R. Cherry  
United States Magistrate Judge  
Southern District of Indiana

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